IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 30th January, 1996.

CRIMINAL APPEAL NO. 802 OF 1987

For Approval and Signature:

THE HON'BLE MR. JUSTICE R.R. JAIN

And

THE HON'BLE MR. JUSTICE H.R. SHELAT.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of Judgment ?

4. Whether this case involves substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

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Shri K.J. Yagnik, Advocate for the appellants.
Shri K.P. Raval, Addl. Public Prosecutor for the respondent.

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Coram: R.R. Jain, J. & H.R. Shelat,J.
(30-1-1996)

ORAL JUDGMENT: (Per: H.R. Shelat, J.)

The then Additional Sessions Judge, Bharuch at Rajpipla, delivering the judgment and order dated 21st August 1987 in Sessions Case No. 128 of 1986 on his file, convicted the appellant No.1 of the offence under Section 302 and sentenced him to rigorous imprisonment for life, and also convicted appellant No.2 of the offence under Section 302 read with Section 34 of Indian Penal Code and sentenced to rigorous imprisonment for

life; and further convicted both the appellants of the offence under Section 135, Bombay Police Act, but inflicted no separate sentence thereof and therefore the appellants the original accused Nos. 1 & 2 feeling aggrieved have preferred this appeal before us.

2. Babubhai Kantibhai, Kantibhai Maganbhai, the brothers and Magan Kala, their father were having the agricultural land within the sim of village Jitpura. In their field they had sown Jowar. Often they were going to the field for supervising the crop or irrigating the crop and also for necessary agricultural operations. If necessary one of the members of their family also used to go to the field for a watch. Four to five days before 19th September 1986, Parvatiben aged about 16 had gone to the field to keep a watch on the crop. Ramesh Karsan is having the field nearby. He was also in his field. Seeing Parvatiben alone he demanded water, nictitated and ogled. With a view to infatuate or allure he said that he would be getting a ribbon for her. As Ramesh Karsan had cut indecent joke, Parvati went to her place and informed her parents, as a result Magan Kala, her grandfather lodged the complaint before the police against Ramesh Karsan. In the morning about 9.00 a.m. on 19th September 1986, Kanti Magan, Babu Kanji and Magan Kala had gone to their field for irrigating the Jowar crop and also sowing the same in another part of their field. At about 9.00 a.m. Babu Kanti had gone to the field taking tiffin. At that time Raju Kalidas Tadvi was going to the school. He informed them that some one killed Rameshbhai Karsanbhai. Thereafter at 9.30 a.m., both the appellants and minor Gooliben went to the field of these 3 persons. The appellant No.1 was armed with a scythe, the appellant No.2 was armed with an axe, and Gooliben was armed with a stick. Soon after entering into the field, they at first assaulted on Maganbhai Kalabhai and succeeded in giving fatal blows with the weapons they were having. Maganbhai Kalabhai sustained fatal injuries and fell into a canal (Naher). Babu Kanti and Kanti Magan apprehending the imminent danger, tried to run away. All the three then chased them and succeeded in causing injuries to Kanti Magan in the field of Jasubhai Motisinh, and thereafter to Babubhai Kantibhai who could be successfully trapped in the field of Koyaji Jitaji. All the three sustained injuries mainly on the head, the vital part and they succumbed to the injuries. A complaint then came to be lodged before the Rajpipla police station which set the police investigation to motion. At the conclusion of the investigation, the chargesheet against both the appellants and Gooliben, of the offences under Section 302, 135 of the Bombay Police Act and in the alternative, 302 read with Section 34, came to be filed before the Court of the Judicial Magistrate (First Class) at Rajpipla. The learned Judge was not competent to hear and decide the case of murder. He therefore committed the case to the Court of Sessions at Bharuch which came to be numbered as Sessions Case

No. 128 of 1986. Thereafter, the learned Sessions Judge assigned the matter to the then Additional Sessions Judge at Bharuch who was holding a sitting on deputation at Rajpipla. Initially charge was framed against all the three accused but later on when it was found that Gooliben was minor and below the age of 16, her trial was separated and against her the case was directed to be filed before the Juvenile Court, and then again charge was framed against both the appellants on 17th August 1987. The appellants pleaded not guilty and claimed to be tried. The prosecution then examined necessary witnesses. The then ld. Additional Sessions Judge, Rajpipla, considering the evidence on record and also the rival submissions made, found that the prosecution had successfully beyond reasonable doubt established the charge levelled against the appellants. He therefore held both the appellants guilty and sentenced them as aforesaid. It is against that order, the present appeal has been filed before us.

3. Mr. K.J. Yagnik, the learned Advocate representing the appellants took us to the entire evidence on record and submitted that the learned Judge below was not right in reaching to the conclusions against the appellants. Though there was nothing on record to hold the appellants guilty, the learned Judge below misappreciating the evidence reached to the erroneous conclusions. We would be dealing with his submissions in detail hereinbelow, but before that it may be stated that on behalf of the prosecution, Mr. Raval, learned APP submitted that there was no substance in any of the submissions advanced on behalf of the appellants as the learned Judge below had committed no error either of law or of fact. The appreciation of evidence was quite in consonance with law and there was no justifiable reason for us to set the evaluation right and upset the judgment and order passed.

4. Mr. Yagnik, the learned Advocate representing the appellants has submitted that although about 10 witnesses are examined the evidence of Ranchhodbhai Hirabhai (Exh.28) is material as whole case hinges upon the same being the sole eye-witness. According to him, because of the enmity this witness has wrongly and deliberately involved the appellants. Formerly, Ganpatbhai, the father of accused No.1 was murdered. Karsan Hira, brother of Ranchhodbhai Hirabhai had murdered Ganpatbhai and in that connection Karsanbhai Hirabhai was in jail. Even in chapter cases between the parties because of the past incidents, enmity cropped up between the two and because of the inimical terms Ranchhodbhai Hirabhai is telling a lie. He has therefore urged us to discard the evidence of Ranchhodbhai Hirabhai, and if that is done, there is no evidence on record to maintain the conviction and sentence inflicted.

5. It may be stated that, on careful scrutiny, we do not

find anything on record, going to show that Ranchhodbhai Hirabhai is telling a lie because of the enmity. In neither of the proceedings either his or above three deceased's names appear. On the contrary, on record it is found that Natvarbhai Hirabhai, Laxmanbhai Hirabhai, Bhaiji Laxman and Bhaiji Magan are alleged to have committed one or the another wrong. The submission about the inimical relation seems to be ill-based. But even if for a while it is believed that Ranchhod Hira had an impression against the appellant with regard to the past proceedings and that germinated ill-will, that aspect cannot deter us in placing reliance on the evidence of Ranchhodbhai Hirabhai because he is supported by the other circumstances on record. There is also no law inhibitting the Court from convicting the accused relying on the evidence of a sole witness. If it is a case of a sole eye-witness, the duty of the Court is to scan the evidence carefully and if after careful consideration, no infirmity is found but it appeals to the conscience of the Court leaving no room to doubt, certainly court is free to place reliance on that evidence and conclude what is logically possible. At this stage, we may refer one decision of the Supreme Court in Malkhan Singh & Ors. v. State of U.P. - AIR 1994 S.C. 1443 which is cited by the learned APP. In that case, testimony of one of the eye-witnesses though inimical to the accused but corroborated by other witnesses, medical evidence and ocular evidence of other eye-witnesses was relied upon holding further that failure to examine other direct witnesses was not fatal to the case of the prosecution. The evidence of the eye-witness was accepted because it was corroborated. Here, in this case also Ranchhodbhai Hirabhai is corroborated. His versions show that the incident happened on 19th September 1986 at 9.45 in his field initially, and then series of the incidents came into being at different places because others were trying to run away so as to save themselves. Initially Magan Kala was assaulted in the Naher (canal) and there he was done away with giving fatal blows by the scythe and the axe. Kanti Magan ran towards the field of Jasubhai Motisinh. The appellants and Gooliben also chased him and succeeded in inflicting on him fatal injuries with the weapons they were having. Thereafter they chased Babubhai Kantibhai and caused injuries to him giving the blows with the weapons they were having in the field of Koyaji Jitaji. The police, after being informed, went to the scene of offence and drew the panchnama (Exh.11). The police moved around all the three places and could find the mud, stained with blood. The police collected the blood-stained mud from all the three above stated places and sent to the chemical analyzer for analysis. It was found stained with the blood of deceased. The find of the blood negatives the submission made on behalf of the appellants that the incident did not happen at the place where the prosecution alleges, but at the place where Ramesh Karsan was murdered in the combat and in that scuffle abovenamed three deceased came to be injured. Had it been so, blood would not

have been found at the abovestated three places. Another corroboration Ranchhod Hira finds from the evidence of Santokben (Exh.29). She is the daughter-in-law of deceased, Maganbhai Kalabhai and Bhabhi (Sister-in-law) of Parvatiben. She has stated about the incident of Parvati's japery 4-5 days prior to the incident. According to her Kanti Magan, Babu Kanti and Magan Kala had gone to the field for sowing the Jowar crop on 19-9-86. At 9.00 a.m. On that day she was at home. She came to know that Ramesh Karsan died. She therefore went out of her house to inquire. In front of the house of Ramesh Karsan, both the appellants and Gooliben were standing. With appellant No.1 she saw scythe, with appellant No.2 axe was there, and Gooliben was armed with stick. They were also saying that Magan Kala, Kanti Magan and Babu were to be done away with, and by such utterance they proceeded towards the field where all the three deceased had gone. Some times thereafter she knew that all the three were killed. Parvatiben Kantibhai whose evidence has been recorded at Exh.30 supports the case of japery, and the incident saying that she knew about the ill-fated three deceased. The cumulative effect of such evidence on record is that Ranchhodbhai Hirabhai finds support. Further, Dr. A.M. Tadvi whose evidence has been recorded at Exh.23 supports the case of injury and possibility of the injury by a particular weapon. It is pertinent to note that in one's on statement under Section 313 of the Code of Criminal Procedure, the appellants have not suggested anything about enmity or the fact which is sought to be believed advancing the contention. They have just denied outright which is not sufficient. Even the case of enmity is also not advanced. Thus when Ranchhod Hira finds support from all such circumstances and materials on record, the so-called enmity cannot prevent us from placing the reliance as otherwise on careful scrutiny, the evidence of Ranchhodbhai Hirabhai is appealing leaving no room to doubt.

6. It was next submitted on behalf of the appellants that some one from the neighbourhood ought to have been examined so as to have support to the say of Ranchhodbhai Hirabhai because on that day many others were also working in neighbouring fields. We are not inclined to accept the submission for the simple reason that the prosecution is bound to examine some one from the neighbourhood only when it is borne out that some one saw the incident and was therefore able to testify. If neighbours had not seen the incident and merely came to know subsequently their examination would not be meaningful. It is not made clear even by putting any question suggestive of a nature in the cross-examination that some one out of those having the neighbouring fields saw the incident and police also recorded the statement, but with some oblique motive that evidence is suppressed. In the case of Amar Singh v. Sttate of Haryana, AIR 1973 S.C. 2221, it is held that if the neighbours, who have not seen the incident, and evidence also does not show that they have

seen the incident, are not examined, the testimony of eye-witnesses cannot be disbelieved on the ground of omission on the part of prosecution to examine the neighbours. The ratio decidendi of this decision supports our view. At this stage, we may refer to the recent decision of the Supreme Court rendered in the case of Kaka Singh vs State of Haryana - AIR 1995 S.C. 1948, wherein it is laid down that when no suggestion made while cross-examining the prosecution witnesses that members of the public were present at the spot and so examination of any one from public was not essential, the incident happened suddenly without any pre-plan. Thus we are fortified in our own view. In this case, therefore, non-examination of some one from the neighbouring field is not fatal. The evidence of the sole eye-witness suffers from no inherent improbabilities, and his say is free from bias, or ill-will. He stated about incident truely, and so it inspires confidence. In view of the matter, we prefer to place reliance on Ranchhodbhai Hirabhai's evidence, making it crystal clear that none else but the appellants have done the alleged wrong namely murdering of all the three above said persons by giving fatal blows with scythe and axe they were having and that too on the vital part of the body.

7. Faced with such situation, Mr. Yagnik, ld. Advocate for the appellants has made a lame attempt submitting alternatively that the learned Judge was not right in applying provisions of Section 302 and convicting the appellants, the case on the contrary was falling within the ambit of Section 304. He has then urged us to alter the conviction from the offence under Section 302 to Section 304, IPC. According to him, the intention to kill cannot be spelt out. Whatever happened was out of sudden provocation namely killing of Ramesh Karsan about two hours prior to the incident. The contention gains no ground to stand upon. At this stage, evidence of Santokben is required to be referred to. Her evidence is recorded at Exh.29. She has categorically made it clear that when hearing about the death of Ramesh Karsan she went out of her house, she found the appellants and Gooliben standing with the abovestated weapons in their hands, and had expressed their intention to kill all the three persons and immediately they proceeded towards their field where all the three deceased had gone for agricultural operations, shortly thereafter all these came to be killed. Such versions of Santokben Kanchanbhai are not assailed in the cross-examination. Her evidence in clear terms reveals rancour and retaliation indicating the intention to kill. Near the house of Santokben they had gone with weapons, as they wanted to take revenge. They studied, decided what to do and expressed their intention to kill. Here was therefore a prior concert namely common intention to kill, and then they rushed towards the field where the three deceased had gone for their agricultural operation. This would show the clear cut intention to kill and is not a case of sudden fight without any premeditation. It was after due deliberation,

and when that is the case, we cannot accede to the submission made on behalf of the appellants.

8. For the foregoing reasons, we find that the learned Judge below has committed no error. He has rightly convicted and sentenced the appellants. We find no justification to upset the same. The appeal is devoid of merits and must fail. In the result, the appeal is hereby dismissed. The conviction and sentence inflicted by the lower Court are hereby maintained.
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